

REMARKS

Applicant has carefully reviewed the Final Office Action of February 23, 2004 and offers the following remarks to accompany the amendments presented above. Applicant appreciates the telephonic interview with the Examiner on April 6, 2004. Where appropriate, comments from the interview are included below.

Claims 1-7 and 14-20 were rejected under 35 U.S.C. § 101. Applicant herein amends the claims to delete reference to "living." This effectively returns the customer related language to its state before the amendment of January 5, 2004. As there was no § 101 rejection prior to this amendment, the deletion of the "living" language should remove the § 101 rejection. Applicant discussed this with the Examiner during the telephonic interview. The Examiner was non-committal as to whether this would impact the indication of allowable subject matter elsewhere in the application. Applicant herein presents the amendment so that the Examiner may formally opine as to its impact.

Claim 1 has been amended to include the subject matter of allowable claim 3. Allowable claim 5 has been amended to independent form. New claims 21-24 have been added so that both claims 1 and 5 have dependent claims with the subject matter of claims 2-6. Specifically, claim 1 has claims 2, 4, 6, and 24 (which corresponds to previously presented claim 5), and claim 5 has claims 3, 21, 22, and 23 (which correspond to claims 2, 4, and 6, respectively). No new matter is added. Furthermore, since the subject matter of these claims has previously been searched, no new issues are raised by the amendment and no new search should be required. MPEP § 904.

Claim 7 is amended to recite that the customer is active within the fueling environment. Support for this can be found at page 9, line 23-page 10, line 21 of the specification.

Claim 7 is also amended to recite that the transaction accounting delivery station is positioned within the fueling environment. Claim 14 is amended to recite that the transaction accounting dispensing facility is located within the fueling facility. Support for these amendments can be found in Figures 4 and 6 as well as throughout the specification.

§ 103(e)

Claims 1, 2, 4, 6, 7, 14, 15, 19, and 20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Nusbaumer et al. (hereinafter "Nusbaumer"). Applicant respectfully traverses.

For the Patent Office to show anticipation, the reference must have each and every claim element. Further, the elements of the reference must be arranged as claimed. MPEP § 2131.

The amendment to claim 1 to include the allowable subject matter of claim 3 places claims 1, 2, 4, and 6 in a condition for allowance. Applicant requests withdrawal of the § 102(e) rejection of claims 1, 2, 4, and 6 at this time.

The amendment to claim 7 also forecloses an anticipation rejection. Specifically, as discussed with the Examiner in the telephonic interview, and as admitted by the Patent Office in the Office Action, the "customer" (the railroad organization) is not active within the fueling environment as recited in the claim. Even if the organization is construed in an overly broad manner such that the organization is somehow present within the fueling environment, the printer of Nusbaumer's Figures 2, 4, and 5 is not present within the fueling environment as recited in the claim. As Nusbaumer does not show a printer within the fueling environment, Nusbaumer cannot anticipate the claim language which recites that the transaction accounting delivery station apparatus is positioned within the fueling environment. Applicant requests withdrawal of the § 102(e) rejection of claim 7 at this time.

Claim 14 has likewise been amended to clarify the location of the transaction accounting dispensing facility. As explained above, Nusbaumer's printer is not within the fueling facility and thus, Nusbaumer cannot anticipate the claim. Claims 15, 19, and 20 are likewise not anticipated at least by virtue of their dependence on claim 14. Applicant requests withdrawal of the § 102(e) rejection of claims 14, 15, 19, and 20 at this time.

§ 103

Claims 16-18 were rejected under 35 U.S.C. § 103 as being unpatentable over Nusbaumer. Applicant respectfully traverses. For the Patent Office to establish obviousness, the Patent Office must show where each and every claim element is located. MPEP § 2143.03.

As explained above, Nusbaumer does not teach or suggest that the transaction accounting dispensing facility is located within the fueling facility. Since this element is not taught or suggested, the Patent Office has not established obviousness, and Applicant requests withdrawal of the § 103 rejection of claims 16-18 at this time.

Applicant requests entry of the amendment, reconsideration of the rejection, and claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



Taylor M. Davenport
Registration No. 42,466
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: April 7, 2004

Attorney Docket: 2400-370

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING
TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW
TO:

Examiner: Gert, Elaine Art Unit: 3627 Fax: 703-872-9306

Kelly Farrow

Name of Sender

Signature

4/7/04

Date of Transmission